

REMARKS

Claims 1, 4-31, and 43-46 are currently pending. Claims 15-31 and 43-46 were previously withdrawn from consideration by the Examiner. By this Amendment, withdrawn claims 15-31 and 43-46 have been cancelled. Pending Claims 1 and 4-14 have been rejected.

I. Examiner Interview

Examiner Castellano conducted a telephone interview with Applicants' attorneys Bradley F. Rademaker and Gregory G. Schlenz on January 16, 2007. Applicants and their attorneys thank Examiner Castellano for his time in conducting the Interview.

In the interview, the Examiner's rejection of pending claim 1 over the Hawley and Edwards references was discussed. The Examiner agreed that claim 1 and dependent claims 4-14 were patentable over Hawley and Edwards, and the Examiner agreed to withdraw the rejection. The Examiner's Interview Summary mailed January 24, 2007, also stated that the rejection would be withdrawn. The obviousness-type double patenting rejections of the claims over Applicants' design patents was also discussed.

II. Rejections Under 35 U.S.C. § 103

In the Office Action, claims 1 and 4-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Design Patent Des. 196,271 to Edwards ("Edwards") in view of U.S. Patent No. 3,519,165 to Hawley ("Hawley"). Applicants submit that neither Edwards nor Hawley discloses, teaches, or suggests at least the following element of claim 1: "the annular shoulder forming an inner stacking surface on the inner surface of the sidewall and the arched portion forming a raised ledge on the inner stacking surface, wherein the base of a second identical container rests upon the inner stacking surface and the raised ledge sits within the arched portion of the second identical container when the second identical container is nested upon the container." In the Interview, the Examiner agreed that this element was not disclosed by the cited references, and further agreed to withdraw this rejection. Thus, Applicants respectfully request reconsideration and withdrawal of this rejection and allowance of claims 1 and 4-14.

III. Double Patenting Rejections

A. Rejections Involving Issued Design Patents

The Examiner rejected claims 1 and 4-14 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims of U.S. Design Patent Nos. D514,385, D514,380, D508,822, D505,830, D504,593, D499,935, D499,934, and D514,884 (collectively, “Applicants’ design patents”). Applicants appealed the Examiner’s rejection of claims 1 and 4-14 for obviousness-type double patenting based on Applicants’ design patents. In the Decision dated November 17, 2008, the Board reversed the Examiner’s obviousness-type double patenting rejections of claims 1 and 4-14. Accordingly, Applicants respectfully request withdrawal of these rejections.

B. Rejections Involving Pending Utility Application

The Examiner also provisionally rejected claims 1 and 4-14 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 5-12, 14, 15, and 21-34 of copending Application No. 11/101,932. Applicants believe that the present claims are patentably distinct from the claims of the ‘932 application. Nevertheless, in the interests of advancing prosecution, Applicants have filed herewith a Terminal Disclaimer over the ‘932 application, and respectfully request withdrawal of this provisional double patenting rejection.

U.S. Application No. 10/676,807
Attorney Docket No. 503177.00387
Reply to Final Office Action Mailed December 4, 2006

CONCLUSION

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the Examiner's rejections. Applicants submit that the Application is in condition for allowance and respectfully request an early notice of the same. The Examiner is requested to contact the undersigned attorney if anything is necessary to further the progress of the present Application.

Please charge any fees to Deposit Account No. 19-0733.

Respectfully submitted,

Dated: January 19, 2009 By: /Gregory G. Schlenz, Reg. No. 55,597/
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